Supreme Court, U.S.
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No. 03-994

In The
Supreme Court of the United States

REBECCA BROWN, in Her Capacity as Special Representative for Ruth S. Reeves, Deceased; REBECCA BROWN, Individually; and TIMOTHY REEVES,

Petitioners,

v.

KENNETH W. STUMPF and GARY A. STUMPF, Cotrustees of S & S LAND TRUST, Under a Land Trust Agreement Dated December 20, 1983, and K & E STUMPF FARMS LP,

Respondents.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Fifth District

RESPONDENTS' BRIEF IN OPPOSITION

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ARGUMENT

I.

REASONS FOR DENYING THE WRIT.

There is no compelling reason for this Court to review the interlocutory ruling of the Appellate Court of Illinois, Fifth District, affirming the dismissal of Petitioners' counterclaims and affirming the denial of injunctive relief requested by Petitioners. First, this Court does not have jurisdiction to review the ruling of the intermediate court. Further, the Petition does not raise any issues identified by the Court in Rule 10 as worthy of consideration. Finally, the decision of the Appellate Court was proper in all respects. Respondents respectfully urge this Honorable Court to deny the Petition for Writ of Certiorari.

A.

This Court Lacks Jurisdiction Over this Case.

The first reason the Petition for Writ of Certiorari should be denied is that this Court has no jurisdiction to grant such a writ at this time in this case. Congress has granted this Court appellate jurisdiction with respect to state litigation only after the highest state court in which judgment could be had has rendered a final judgment or decree. 28 U.S.C. § 1257. As a general matter, to be reviewed by this Court, a state court judgment must be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. *Pierce County, Washington v. Guillen*, 537 U.S. 129, 140, 123 S. Ct. 720, 728 (2003). A state court judgment must also be subject to no further review or correction in any other state tribunal. *Jefferson v. City of Tarrant, Alabama*, 522 U.S. 75, 81, 118 S. Ct. 481, 485-6 (1997). In general, the

final-judgment rule has been interpreted to preclude review where anything further remains to be determined by a state court, no matter how dissociated from federal issues that may have finally been adjudicated. *Flynt v. Ohio*, 451 U.S. 619, 620, 101 S. Ct. 1958, 1959 (1981). As this Court has recognized, this final-judgment rule is not a technicality to be easily scorned – rather, it is an important factor in the smooth working of the federal system. *Jefferson v. City of Tarrant, Alabama*, 522 U.S. 75, 81, 118 S. Ct. 481, 486 (1997).

In this case, Petitioners are seeking a writ to be issued with respect to the ruling on their second interlocutory appeal in this case. The cause has been remanded for trial, and there will almost certainly be another appeal from the final judgment in this cause as well as any additional interlocutory appeals filed by Petitioners. The remanding of a cause for trial is usually an indication that there is no final judgment or decree sufficient to invoke this Court's jurisdiction. *See O'Dell v. Espinoza*, 456 U.S. 430, 102 S. Ct. 1865 (1982); *San Diego Gas & Electric Company v. City of San Diego*, 450 U.S. 621, 101 S. Ct. 1287 (1981). In fact, Petitioners' request for review in this case looks less like a petition for certiorari and more like a petition for an extraordinary writ seeking to compel a trial court judge to make a particular ruling in a civil action. *See Whitaker v. Superior Court of California, San Francisco County*, 514 U.S. 208, 115 S. Ct. 1446 (1995). As there is no final judgment or decree in this case, there is no jurisdictional basis by which this Court can or should grant a writ of certiorari at this time.

B.

The Petition Raises no Rule 10 Issues.

Supreme Court Rule 10 lists three categories of issues worthy of the Court's consideration. The Petition filed in this cause does not attempt to frame the Questions Presented in order to raise any issues described in Rule 10, nor are any such issues present in the Appellate Court's decision. The state court decision in this case does not decide any important federal question at all[1], let alone one that conflicts with the decisions of this or any other Court. Further, as is evident from the failure of the Appellate Court to publish its decision and the failure of the Illinois Supreme Court to grant further review, there were no important questions, federal or otherwise, involved in the decision. Nothing about this case suggests a level of importance sufficient to warrant this Court's attention.

Due to the total lack of any cognizable federal issue in the appellate ruling, Petitioners, for the first time in this proceeding, cite an alleged violation of 18 U.S.C. § 1011. An argument not raised in lower court proceedings and raised for the first time at the Supreme Court level is waived and will not be reviewed by this Court. *See Sprietsma v. Mercury Marine*, 537 U.S. 51, 55, 123 S. Ct.

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[1] Petitioners apparently take the position that every adverse ruling in this case is a denial of their due process rights. This Court has long recognized that a mere error of state law is not a denial of due process: "If the contrary were true, then, 'every erroneous decision by a state court on state law would come [to this Court] as a federal constitutional question.'" *Engle v. Isaac*, 456 U.S. 107, 121, 102 S. Ct. 1558, 1568 n.21 (1982) (quoting *Gryger v. Burke*, 334 U.S. 728, 731, 68 S. Ct. 1256, 1257 (1948)).

518, 522 (2002). Petitioners should not be wasting this Court's time with issues they failed to raise in the trial or appellate courts.

Rule 10 also states that, "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." As is evident from the text of the Appellate Court's decision and of the Questions Presented, Petitioners' claims on appeal are merely alleged misapplications of properly stated rules of law to the "facts" as they purport them to be. Petitioners cannot argue that the various statutes of limitation are unconstitutional, they can only argue that the incorrect limitation was applied to the facts of the case as contained in the exhibits to the pleadings. Thus, this is the type of case which, according to Rule 10, this Court is not interested in hearing. Accordingly, the Petition for Writ of Certiorari should be denied.

C.

The Appellate Court's Decision was Correct.

The Appellate Court's decision requires no review for the additional reason that it is well-reasoned and the conclusions therein conform to the law in all respects. The trial court and the appellate court correctly identified insurmountable problems relating to limitations in the Counterclaims: "**We agree with the trial court that the defendants' assertions are 'nothing more than an attempt to circumvent the statute of limitations.'**" *Stumpf v. Brown*, No. 5-01-0876 (Ill. Ct. App. 5th Dist. filed April 14, 2003). The trial court had enough conclusive information about each of the nine claims crammed into

both Counts III and IV of the amended Counterclaims by which to dismiss both counts.

Frankly, there were numerous other problems with these claims preventing them from passing the "smell test." But, the trial court's ruling was correct in all respects, and cannot be considered erroneous when the claims are properly analyzed. The dismissals of amended Counterclaim Counts III and IV were properly affirmed.

The counterclaims were just the latest installment in a series of frivolous suits brought by Petitioners. The litigation started in 1994 with a malpractice action against a local attorney that Petitioners voluntarily dismissed in 1997 when summary judgment was looming. The litigation continued with a new federal RICO case which this Court declined to review after its dismissal was affirmed by the United States Court of Appeals for the Seventh Circuit. *Reeves v. Frierdich*, 530 U.S. 1215, 120 S. Ct. 2218 (2000) (mem.), *pet. for rehearing denied*, 530 U.S. 1289, 121 S. Ct. 3 (2000) (mem.). Petitioners should be given no further opportunity in this Court to cause unnecessary expense and aggravation to Respondents, and the Petition for Writ of Certiorari should be denied.

II.

MISSTATEMENTS OF FACT AND LAW.

Supreme Court Rule 15 obligates Respondents to address any misstatements of fact or law contained within the Petition for Writ of Certiorari. In this case, the Petition is replete with both types of misstatements.

A.

Petitioners' "Facts" are One-Sided.

The record on appeal is devoid of the usual "facts" for the reason that the counterclaims were dismissed prior to the filing of an answer to the counterclaims. The decisions of the trial and appellate courts were based on the unanswered allegations in the Amended Counterclaims and the exhibits attached thereto.[2] While the Amended Counterclaims were successfully attacked for their failure to state recognizable and non time-barred claims, Respondents wish to assure the Court that the failure of Respondents to attack the Amended Counterclaims on the merits was entirely the result of having obtained relief at the pleading stage and not because such a defense on the merits would not have succeeded. On the contrary, it is Respondents' position that virtually all of the allegations in the Amended Counterclaims were products of a vivid imagination and a failure to take into account indisputable evidence that Petitioners' asserted causes of action have no basis in fact.

B.

Petitioners' Misstatements of "Fact."

While there is no compelling reason to take up this Court's time with a laundry list of each and every misstatement of fact in the Petition for Writ of Certiorari, addressing several of the misstatements should provide

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[2] As the Court is well aware, scandalous lies must be taken as true for the purposes of a motion to dismiss if they are "well pled."

this Court with a better understanding of Petitioners' lack of credibility. The following is a list of some of the more egregious misstatements in the Petition:

1.

Alan Stumpf was never Reeves' Attorney.

On pages three and five of the Petition, Petitioners allege that Co-counsel for Respondents, Alan Stumpf, is a former attorney for Ruth Reeves. **This is not true.** While all well-plead allegations must be taken as true for the purposes of a motion to dismiss, Respondents and their counsel resent Petitioners' constant publishing of this untruth and ask the Court to disregard it. The preparation of a corporate annual report for a corporation in which Reeves was a shareholder does not make Alan Stumpf a former attorney of Reeves', and performing such work prior to 1979 in no way supports Petitioners' argument that Alan Stumpf somehow owed Reeves a fiduciary duty 13 years later in 1992 and long after Reeves had employed other attorneys to do her personal work.

2.

Bogus Claims of Fraud.

On pages 3 through 5 of the Petition, Petitioners allege that various releases and other documents were procured through fraud of one sort or another. This Court should be made aware of the fact that Petitioners have consistently claimed every document in this case to be forged unless there is overwhelming proof to the contrary, and even then the admission of genuineness has been reluctant. For example, on page 5 of the Petition, Petitioners

admit that Ruth Reeves received the sum of $205,128.76. Originally, Petitioners filed pleadings claiming that Reeves never received that amount. It was only when Respondents produced a copy of the check, endorsed by Reeves, and the thank-you note she sent to Alan Stumpf upon receipt of the check, that Petitioners admitted the receipt of that sum, but they continue to insist that the related release was fraudulent for other reasons.[3] Such claims should be regarded with the appropriate skepticism.

Similarly, on pages 4 and 16 of the Petition, Petitioners continue to insist that Reeves never received a $600,221 check from a mortgage payoff even though Petitioner Timothy Frey (a/k/a Timothy Reeves) admitted in a deposition in another case that Ruth Reeves' brokerage account was opened in the amount of $600,000 at approximately the same time that the $600,000 check to Reeves was deposited into a bank account in her name.

3.

Extraneous Lawsuits.

On pages 7 and 16 of their Petition, Petitioners ask this Court to take judicial notice of a lawsuit filed in St. Louis against an unrelated party. **This request is improper.**

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[3] Petitioners tried to convince the trial court that Respondents were attempting to use that release to preclude all claims, not merely the 1987 mortgage the document purported to release. This should no longer be an issue. During arguments in the trial court, Respondents stipulated that the effect of the release was limited solely to the 1987 mortgage.

First, Respondents only recently learned of that lawsuit, have not participated in that lawsuit in any way, and have not been provided with the pleadings Petitioners are asking this Court to consider. Second, allegations Petitioners make against other persons in unrelated lawsuits have nothing to do with their claim of constitutional deprivation in this case and, therefore, add no weight to their Petition. Finally, the only notice this Court should take of the other lawsuit is that it constitutes further evidence of Petitioners' unabated propensity to file frivolous lawsuits.

4.

No "Injection" of Constitutional Issue.

On pages 8 and 9 of their Petition, Petitioners claim that the purported constitutional issue was "injected" into the case for the first time at the appellate level. **This claim is meritless.** The Appellate Court did not choose to apply a statute of limitation that the trial court did not. Rather, the Appellate Court merely affirmed that the trial court applied the correct statute of limitation. How this constitutes an "injection for the first time at the appellate level" is a mystery – especially as Petitioners fail to cite to any part of the record supporting their claim of "injection" other than the entire Summary Order. Even a cursory review of the Appellate Court's Summary Order is sufficient to debunk Petitioners' lame claim of "injection."

5.

Ten Mortgage Liens?

On page 11 of their Petition, Petitioners state that the trial court "found" ten[4] "Mortgage Liens" when it denied a motion to dismiss the counts for failure to state a claim. **This is not true.** The ruling of the trial court that purportedly "recognized" all ten of these claims was made in a single sentence in the trial court's Order of March 26, 2001: "Counterdefendants' Motions to Dismiss Counterclaims III and IV are denied, the Court finding that each count states a cause of action." There is absolutely nothing in that single sentence that shows that the trial court even knew that Petitioners were attempting to cram ten causes of action into each of those counts, let alone that the trial court agreed that ten causes of action had been stated. Petitioners' argument to the contrary is merely wishful thinking.

6.

Manufactured Fraud Issue.

On page 12 of their Petition, Petitioners allege that Respondent Kenneth Stumpf can only prove $316,000 in payments for property purchased for $1.6 million. **This is false.** Neither in this cause nor in any other lawsuit has Mr. Stumpf undertaken to present proof of full payment for the property in question. The affidavit to which Petitioners

[4] The number of purported liens argued by Petitioners at the appellate level was only nine. Apparently, Petitioners found another one while preparing their petitions to this Court and the Illinois Supreme Court.

refer contained copies of checks merely by way of example and not as a full showing of all of the proof available to disprove Petitioners' frivolous claims. Petitioners' continued use of this fallacious argument after having it explained to them on numerous occasions is further evidence of Petitioners' inability or unwillingness to conform their allegations and arguments to reality.

C.

Petitioners' Misstatements of Law.

In an effort to provide clarity rather than contribute to confusion, Respondents have not heretofore made an effort to counter each and every argument in the Petition for Writ of Certiorari. As a practical matter, the Petition contains too many erroneous arguments to address each one individually. However, by way of example, this final section of Respondents' Response will discuss two of those erroneous arguments in summary fashion.

1.

"Fundamental" Rights?

On pages 8 and 9 of the Petition, Petitioners argue that, "There is a fundamental right to plead a claim and have the proper Statute of Limitations applied. . . . [and] a fundamental right to not reward wrongdoers via fraudulent releases and assignments," and, "There exists a fundamental right to not be victimized by fraudulent releases and assignments." While these sound like nice propositions, Petitioners have cited no authority that there are any such "fundamental rights" found in the Constitution, and Respondents doubt that any such authority

exists under any **recognized** umbra or penumbra. Further, Petitioners have been given every opportunity to plead their claims. No recognized fundamental rights have been denied these litigants, and their Petition should be denied.

2.

No Proof Necessary at this Stage.

On page 13 of the Petition, Petitioners argue that there is no proof that each and every one of their claimed liens was satisfied. As the trial court was deciding motions for possession and motions to dismiss, rather than motions for summary judgment or issues at trial, there was no requirement that Respondents produce any proof at this stage of the litigation. The motions to dismiss were decided on Petitioners' own documents, and the possession and receiver motions were decided on Petitioners' own failure to meet their burden with respect to the requirements. This argument of Petitioners' is irrelevant and should be given no weight.

CONCLUSION

A discussion of the relevant law and the application of that law to the facts of this case is not called for at this time, and no attempt has been made to do so. This Brief is intended to address misstatements and to point out why a writ of certiorari should not be granted.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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